MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 185 OF 1996

PRAKASH HANMANT JADHAV)
R/o Gandhinagar, Kashil Tal.)
Satara) .. APPELLANT
(Org. Complainant)

Versus

1. VISHAL GANAPATI SALUNKE)
2. BABAN GANAPATI SALUNKE)
3. SUBHASH BABAN SALUNKE)
4. SANDEEP VITHAL SALUNKE)
All R/o Gandhinagar Kashil)
Taluka & Dist. Satara)

5. CHAGAN NAMDEO RAMVANT)
R/O Chikhali, Tal. Karad)
Dist. Satara.) Org. Accused.

6. STATE OF MAHARASHTRA) .. RESPONDENTS

Mr. S. V. Kotwal for appellant
Mr. Milind Deshmukh for R-1
Mr. Rajeshree Gadhvi, APP _

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER, 05, 2007.

ORAL JUDGMENT:

. The appellant is the original complainant. He has challenged in this appeal judgment and order dated 28/2/95 whereby the respondents are acquitted of the offences punishable under Section 323, 504, 506 read with 34 of the Indian Penal Code ("I.P.C." for short). The respondents are original accused 1 to 4 respectively and for convenience they are referred to as such.

2. The case of the complainant PW 1 Prakash Jadhav as disclosed from his evidence is that on 12/9/93 at about 8 a.m. he had gone to plot No. 84 at village Kashil, Gandhinagar. The said plot belongs to him. He found that the boundary stone of his plot was removed. He called accused 3 Subhash and asked him as to who had uprooted the stone. At that time accused 1 and 2 came there. They rushed towards him. They started abusing him. Accused 2 caught hold of his neck and accused 1 and 2 gave him kicks on his private parts. The accused pushed him. He fell on the ground. Accused 3 to 5 who were also present there dealt fist blows on him. At that time PW 2 Shamrao Maruti Jadhav and PW 3

Patang Baburao Jadhav came there. They rescued him. He then went to Borgaon Police Station and lodged his complaint. The police sent him to Nagthane Primary Health Centre. The doctor examined him and issued certificate Exh. 35.

3. On 15/9/93, the complainant filed a private complaint in the Court of Judicial Magistrate, Satara. In the complaint he gave a gist of the incident and in the verification he stated that because the police did not take any action on his complaint he had filed the complaint in the court . The learned Magistrate then issued process under Sections 323, 504, 506 read with Section 34 of the I.P.C. against the accused. Charges were framed against the accused. The accused pleaded not guilty.

4. In support of his case the complainant examined PW 2 Shamrao Maruti Jadhav. Shamrao Jadhav has stated that the incident had taken place about one year back at about 8 a.m. in the morning. He was at the playground at Gandhinagar. PW 3 Patang Jadhav was with him. They heard sound of beating and hence they went near Chapper of one Prakash. Two to four persons were there. According to him

accused 1,2 and 3 were there. A friend of accused 3 was there but he did not know his name. He has stated that he rescued PW 1.

5. PW 3 is Patang Jadhav. He has stated that the incident in question took place about one year back at about 8 to 8-30 a.m. That time he was standing in the playground. He was chatting with Shamrao Jadhav. He heard a sound of beating. He, therefore, went towards the direction of the sound. According to him accused 1, 2, 3 and 4 were there. They were beating PW 1 Prakash. According to him he and PW 2 Shamrao rescued PW 1.

6. PW 4 is Dr. Vilas Ramchandra Nalawade. At the relevant time he was attached to PHC Nagthane as Medical Officer. He had examined PW 1 Prakash on 19/2/93. He has proved the medical certificate which is at Exh.-35. He has stated that he had issued the medical certificate. The medical certificate shows that on 12/9/93 at 1-30 p.m. PW 1 Prakash was examined at the PHC Nagthane. Dr. Nalawade has described the injuries found on PW 1 Prakash as under:

". Injury No. 1 multiple minor abrassions over

neck anteriorly. The age of injury within 24 hours.

. Injury No. 2 tenderness over right scrotum. Swelling present.

. Injury No. 3 minor abrassion over scortum upper part.

. Injury No. 4 tenderness over back lumber regiod."

According to him the injuries were possible by hard and blunt object and all the injuries were simple in nature.

7. The defence of the accused was of total denial. According to the accused their house is in Plot No. 81 and their cattle shade is in plot Nos. 82 and 83. Plot No. 84 is an open plot. It belongs to PW 1 Prakash. According to PW 1 Prakash, the accused have constructed their house on his plot though in fact it is not so. Because of this PW 1 Prakash has filed a false complaint.

8. After perusing the evidence on record, the

learned Magistrate came to a conclusion that the complainant has failed to prove his case beyond reasonable doubt and hence he acquitted the accused. Hence this appeal.

9. I have heard at some length Mr. Kotwal, learned counsel appearing for the appellant, Mr. Milind Deshmukh, learned counsel for respondent 1 and Ms. Gadhvi, the learned APP.

10. Mr. Kotwal, learned counsel for the appellant submitted that the impugned judgment and order is perverse and deserves to be set aside. He submitted that Medical Officer PW 4 Dr. Nalawade has issued certificate after examination of PW 1 on 12/9/93 at 1-30 p.m. The certificate has been proved by him in his evidence. In his evidence Dr. Nalawade has reiterated the injuries received by PW 1. The injuries are on the private parts of PW 1. PW 1 has clearly stated that the accused kicked him on his private parts. Therefore, oral evidence of PW 1 is consistent with the medical evidence. Because the police did not take action within three days PW 1 has lodged the instant private complaint in the court. Mr. Kotwal contended that evidence of PW 1 inspires confidence and the learned

Magistrate should have believed it. He submitted that PW 1's evidence is supported by the evidence of PW 2 Shamrao Jadhav and PW 3 Patang Jadhav. The learned Magistrate has disbelieved them because of insignificant discrepancies in their evidence. Mr. Kotwal contended that, therefore, impugned judgment and order be set aside and the accused be convicted in accordance with law.

11. The learned counsel appearing for the 1st respondent submitted that the view taken by the trial court is a reasonably possible view. The complainant has failed to prove his case beyond reasonable doubt and, therefore, the accused have rightly been acquitted. He submitted that no interference is necessary with the impugned order.

12. It is well settled that if the view taken by the trial court is a reasonably possible view, this court should not interfere with it in an appeal against acquittal. It is equally well settled that merely because some other view is possible on the facts of the case, this court should not set aside the view of the trial court, if it is a reasonably possible view and substitute its own view in place thereof. (State of Rajasthan v. Raja Ram (2003) 8

SCC 180). Keeping these principles in mind I shall approach this case.

13. The complainant has stated that the accused kicked him on his private parts. It is also true that the doctor's certificate indicates that the accused had received injuries on his private parts. But the question is whether it is proved that it is the accused who caused those injuries.

14. Evidence of PW 2 Shamrao Jadhav and PW 3 Patang Jadhav is sketchy. It does not appear that Shamrao Jadhav had in fact seen the incident. He says that he was at the playground along with Patang Jadhav and upon hearing the sound he went towards the direction of the sound. He rescued the complainant. Therefore, though he states that accused 1, 2 and 3 were present, his evidence is not useful to establish that it is the accused who attacked the complainant. He has obviously not seen the incident. Similarly PW 3 Patang Jadhav has stated that upon hearing the sound he went to that direction along with Shamrao Jadhav. He has stated that the accused were present there and they were beating Prakash. He has further stated that he and PW 2 Shamrao Jadhav rescued the complainant.

However, his evidence that he had seen the assault is doubtful because it is the case of PW 2 and PW 3 that they went together to the place where the complainant was being attacked and it appears from the evidence of PW 2 that they reached there after the assault was over. It is doubtful whether PW 3 could have seen the assault because PW 2 does not say that he saw the accused beating the complainant. In the circumstances the evidence of these two witnesses is not consistent and it does not bear out the case of PW 1. They do not offer the required corroboration to the case of PW 1. It will be, therefore, difficult to rely only on the evidence of PW 1 and convict the accused. In the absence of any corroboration to the evidence of PW 1 as regards the actual incident, it is difficult to convict the accused on the basis of interested evidence of PW 1 and the medical evidence.

15. In any case, in my opinion, the view taken by the trial court is a reasonably possible view which does not deserve to be disturbed in an appeal against acquittal. In the circumstances, the appeal is dismissed.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 185 OF 1996

DATE OF DECISION:05/9/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)

3. Whether Their Lordships wish to see the fair copy of the Judgment?)

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?)

5. Whether it is to be circulated to the Civil Judges?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?)

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PRAKASH HANMAN JADHAV .. APPELLANT
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Mr. Rajeshree Gadhvi, APP.

CORAM: SMT. RANJANA DESAI, J.

DATE: SEPTEMBER 05, 2007

OPERATIVE PART OF ORDER:

. For the reasons stated in the oral judgment, this court has dismissed the appeal.

JUDGE.